

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Washington, D. C.

SODEXO AMERICA LLC

and

Case 21-CA-39086

PATRICIA ORTEGA, An Individual

SODEXO AMERICA, LLC AND  
USC UNIVERSITY HOSPITAL

and

Case 21-CA-39109

SERVICE WORKERS UNITED

USC UNIVERSITY HOSPITAL

and

Cases 21-CA-39328  
21-CA-39403

NATIONAL UNION OF HEALTHCARE WORKERS

GENERAL COUNSEL'S OPPOSITION TO  
RESPONDENT USC UNIVERSITY HOSPITAL'S REQUEST FOR  
SPECIAL APPEAL OF ALJ'S ORDER

Counsel for the Acting General Counsel hereby opposes the Respondent USC University Hospital's Request for Special Permission to Appeal the ALJ's Order in the captioned cases. The Opposition is based on the following:

I: BACKGROUND

In *Sodexo America LLC and USC University Hospital*, 358 NLRB No. 79 (2012), hereafter the Decision, the Board found a rule prohibiting off-duty employees from entering USC University Hospital to be unlawful. Therein, the Board remanded to the administrative law judge (ALJ) the narrow issue of whether four employees, who were disciplined for violating the rule,

implicated concerns underlying Section 7 of the National Labor Relations Act (NLRA or Act).

Following the Board's underlying decision in this matter, after two postponements, the ALJ set the remand hearing for December 5, 2012.

On October 15, 2012 and October 19, 2012, Respondent-USC University Hospital, hereafter Respondent-Hospital, and Respondent-Sodexo America LLC, filed Petitions for Review with the D.C. Circuit Court of Appeals, respectively.

On November 28, 2012, the Board filed its Cross Petition for Enforcement of the Decision with the D.C. Circuit Court of Appeals.

On November 29, 2012, Respondent-Hospital filed, with the ALJ, a document entitled "Notice of Filing of Administrative Record," requesting that the remand be vacated. By a letter to the parties, dated November 29, 2012, the ALJ ordered that the remand hearing go forward as scheduled on December 5, 2012. Whereupon, on December 3, 2012, Respondent Hospital filed two documents requesting, once again, that the remand not go forward: a request for a special appeal to the Board, and a Motion for Reconsideration to the ALJ. Thereafter, also on December 3, 2012, before the Board, Respondent-Sodexo America LLC joined Respondent-Hospital's request for special permission to appeal the ALJ's order to conduct the remand hearing as scheduled.

## II. ARGUMENT

### A. The NLRA Precludes a Stay Based Upon the Filing of a Petition for Review.

Respondent-Hospital claims that a stay is warranted because it filed a Petition for Review before the D.C. Circuit Court of Appeals, and because the Administrative Record has now been filed therein. Respondent-Hospital provides no applicable legal authority in support of its contentions.<sup>1</sup> The NLRA specifically precludes the stay of a Board order based upon a party's

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<sup>1</sup> Respondent-Hospital cites *NLRB v. Legacy Health System*, 662 F.3d 1124 (9<sup>th</sup> Cir. 2011) and *NY Presbyterian Hosp. v. NLRB*, 649 NLRB 723 (DC Cir. 2011), for the proposition that failure to raise certain issues prior to filing of the appellate court record bars such issues from being raised. However, these cases present entirely different scenarios

filing of a petition for review pursuant to Section 10(f). Section 10(g) of the Act states that “[t]he commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board’s order.”

In the Decision, the Board remanded to the ALJ for further appropriate action: “we remand to the judge with instructions to reopen the record and determine whether the activity of the four-named employees implicated the concerns underlying Section 7. If so, the discipline violated Section 8(a)(1) of the Act.”

Because Respondent-Hospital’s Petition for Review is filed pursuant to Section 10(f) of the NLRA, and the D.C. Circuit has not issued an order staying these proceedings, Respondent-Hospital must honor the Board’s order regarding the remand. Accordingly, a stay is unwarranted and, absent order by the D. C. Circuit, precluded by Section 10(g). See, *La Gloria Oil and Gas Co.*, 338 NLRB 858, (2003)(Board denies employer’s motion for stay in proceedings as Section 10(g) of the Act requires that the employer honor the Board’s order absent a stay by the Court of Appeals).

**B. A Stay in the Remanded Proceeding Would Upset the Board’s Orderly Processes.**

It has been the Board’s consistent policy to “adhere to its previous holding until the Supreme Court of the United States has ruled otherwise.” *Pathmark Stores, Inc.*, 342 NLRB 378, 378 n. 1 (2004) quoting *Iowa Beef Packers, Inc.*, 144 NLRB 615, 616 (1963); *Insurance Agents’ Intl. Union*, 119 NLRB 768, 773 (1957). “Only by such recognition of the legal authority of Board precedent, will a uniform and orderly administration of a national act, such as the National Labor Relations

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from the instant case. For example, in *NY Presbyterian Hosp. v. NLRB*, the D.C. Circuit rejected an argument implicating purported concerns of confidentiality because it has not been raised in the Board’s underlying proceedings.

Act, be achieved.” Id. Respondent’s attempt to stay this matter to challenge the Board’s ruling seeks to upset this longstanding principal, would undermine the orderly administration of the Act, unduly delay presentation of the remand issue, and is against the public interest. Accordingly, the Respondent-Hospital’s Request for a Special Appeal should be denied.

Dated at Los Angeles, California, this 3<sup>rd</sup> day of December, 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alice J. Garfield", is written over a horizontal line.

Alice J. Garfield  
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STATEMENT OF SERVICE

I hereby certify that a copy of Counsel for the Acting General Counsel's Opposition to Respondent-USC University Hospital's Request for Special Appeal of ALJ's Order was submitted by E-filing to the Executive Secretary's Office of the National Labor Relations Board on December 3, 2012. The following parties were served with a copy of the same document by electronic mail.

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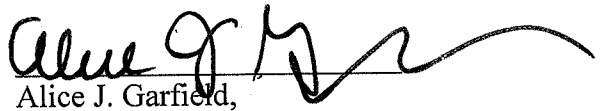
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Dated at Los Angeles, California,  
this 3rd day of December 2012

  
Alice J. Garfield,  
Counsel for the Acting General Counsel  
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Region 21